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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,036	06/18/2001	Baldine-Brunel Paul	2685/5737	1365

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AT&T CORP.
ROOM 2A207
ONE AT&T WAY
BEDMINSTER, NJ 07921

EXAMINER

HUYNH, SON P

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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12/18/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/882,036

Applicant(s)

PAUL ET AL.

Examiner

Son P. Huynh

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-8 and 24-42.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.



CHRIS KELLEY

SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Response to Arguments

In response to applicant's argument that there is no motivation or suggestion to combine the references because one of ordinary skill in the art would find that Chiu et al. actually teach away from combination with Masaki et al. since Chiu explains problem within the art relates to a retransmission of data when errors occur in the initial transmission..., nothing in Masaki et al. reference the use of a base layer or an enhancement layer when transmitting data (page 2, line 5-page 7, line 19), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation or suggestion to combine the references is found either in the references themselves and/or in the knowledge generally available to one of ordinary skill in the art.

In specifically, the Final Office Action dated 09/29/2006 does not modify the system in Chiu's reference with the system of Masaki reference. Instead, The Final Office Action indicates Chiu discloses the teaching of receiving information about the lost of low priority frames by the network; and if more than a threshold amount of low priority frames are being lost, encoding an additional number of the low priority frames as high priority frames for encoding as high priority and retransmit to the receiver (see discussed in the Final Office Action dated 9/29/06, page 3, paragraph 2); The Final Office Action then indicated Masaki discloses the teaching of the additional high priority are encoded as lower quality than is generally used for high priority frames. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Li's system in view of Chiu's (Chiu's teaching of receiving information about the lost of low priority frames by the network; and if more than a threshold amount of low priority frames are being lost, encoding an additional number of the low priority frames as high priority frames for encoding as high priority and retransmit to the receiver) to use the teaching as taught by Masaki (teaching of the additional high priority are encoded as lower quality than is generally used for high priority frames) in order to minimize/suppress delay time so that a moving picture with smooth movement (desired quality) can be displayed on the receiving side...(col. 9, lines 40-47) - see the Final Office Action page, 4, paragraph 2. Thus, the Final Office Action indicates the modification of Li's system with Chiu's teaching and with Masaki's teaching; the Office Action does not modify Chiu's system with Masaki's system.

In addition, Chiu's reference discloses redundant transmission of such information is an inefficient use of bandwidth as discussed by the Applicant. However, Chiu's reference does not prohibit or exclusive the use to retransmission of data. In fact, Chiu references disclose a perceptual preprocessor is used to determine, according to a set of criteria, whether to re-transmit the subject macro block and to what priority the re-transmitted macro block should be assigned... then, the macro block will be re-transmitted at a lower priority by encoding the subject macro block onto the enhancement layer (see discussion in bridge paragraph between page 2 and page 3 of the Final Office Action and Chiu's reference, col. 2, lines 8-39). Thus, Chiu discloses the teaching of re-transmission of data packet. Therefore, Chiu does not teach away from combination with Masaki.

Furthermore, the claims do not recite "the use of a base layer or an enhancement layer when transmitting data". Instead, the claims recite high priority frames, low priority frames. The limitation of lower priority frame or low priority frame are already read on Li's disclosure of based layers and enhancement layer (see discussion on bridge paragraph between page 2 and page 3 of the Final Office Action. The Examiner relies on Masaki's reference for the teaching of the additional high priority are encoded as lower quality than is generally used for high priority frames (See Office Action, page 4, paragraph 2).

For Applicant's argument "one of ordinary skill in the art would not be motivated to combine Zhang et al with the teaching of Masaki", again, The Final Office Action does not modify Masaki's system with Zhang's system; instead, the Final Office Action indicates modifying Li's system with the teaching of Chiu's reference, the teaching a Masaki's reference, and the teaching of Zhang's reference. For the reasons discussed above, it would have been obvious to one of ordinary skill in the art at the time the invention to modify Li's reference with the teaching as taught by Chiu, teaching as taught Masaki, and/or teaching as taught Zhang for the benefits as discussed in the Final Office Action. Therefore, the combination of the references is proper..